IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 313 of 1986

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ALIHUSEN AKBARALI

Versus

THE STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 313 of 1986

MR KV SHELAT for Petitioner No. 1

Ms P B Sheth,, APP for Respondent No. 1

MR MAULIN R RAVAL for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 08/10/2003

ORAL JUDGEMENT

The petitioner herein has filed this criminal revision application under section 397 read with section

401 of the Criminal Procedure Code, 1973 (for short, 'the Code') challenging the judgment and order dated 2.5.1986 recorded by the learned Addl.City Sessions Judge, Ahmedabad in Criminal Appeal No.140/85 dismissing the said appeal and confirming the judgment and conviction order datd 30.10.1985 recorded by the learned Metropolitan Magistrate, Court No.8, Ahmedabad in Summary Criminal Case No.17/84 convicting the present petitioner for offence under section 7 read with section 16 of the Prevention of Food Adulteration Act, 1954 and sentencing the petitioner to suffer S.I. for six months and directing the petitioner to pay fine of Rupees One thousand and directing the petitioner to further undergo S.I. for one month, in default of payment of fine.

2. As per the case of the respondent Municipal Corporation for the City of Ahmedabad, on 13.10.1983 at about 10 a.m. the original complainant had gone to the shop of the petitioner situated at Ahmedabad and disclosed his identity and demonstrated his intention to purchase cow milk for the purpose of sample for being sent for chemical analysis. Accordingly, the sample was collected, due procedure was followed and the sample was sent to the Public Analyst. As per the report of the Public Analyst, the cow milk purchased by the contesting respondent as above, was found to be adulterated and, therefore after issuing notice to the petitioner, a complaint was filed before the learned Metropolitan Maistrate at Ahmedabad. The said case was registered as summary criminal case No.17/84. The trial court recorded plea of the petitioner. He pleaded not guilty and, therefore, evidence was recorded. At the end of the evidence further statement of the petitioner was recorded and after hearing, the petitioner was found guilty for the said offence and, therefore, he was punished as aforesaid by the learned Metropolitan Magistrate, Ahmedabad. Feeling aggrieved by the said order of the trial court, the petitioner filed criminal appeal in the City Sessions Court besing Criminal Appeal No.140/85 unsuccessfully. Hence this revision application.

3. The petitiioner has mainly contended here that the trial court as well as the lower Appellate Court has not taken into consideration the evidence on record which cannot lead to conviction of the petitioner. That the procedure adopted by the original complainant in collecting sample was not proper and was not in accordance with the law and rules. That the sanction accorded by the sanctioning authority was not in accordance with law and there was non-application of mind by the Dy.Commissioner of Ahmedabad Municipal Corporation

who sanctioned the prosecution. That on the whole, the judgment and conviction order recorded by the two courts below are illegal and erroneous and deserve to be set aside. The petitioner has, therefore, prayed that the present revision application be allowed and the said conviction recorded against the petitioner be set aside.

4. Rule was issued. In response to the service of notice of rule, Mr Maulin R Raval, learned Advocate has appeared on behalf of the original complainant whereas Ms. Paurnami B Sheth, learned APP has appeared for the State. I have heard the learned Advocate for the petitioner and learned Advocate for the contesting respondent as well as the learned APP.

5. During the course of his argument, learned Advocate for the petitioner has argued that the sanction accorded by the Dy.Commissioner of Municipal Corporation for the City of Ahmedabad, is illegal and there is clear non-application of mind and therefore, in absence of a valid sanction, the prosecution against the petitioner stands vitiated and when the prosecution stands vitiated, the conviction and sentence imposed on the petitioner will also stand vitiated. In order to appreciate the aforesaid argument, it would be necessary for us to refer the order of sanction recorded by the Dy.Commissioner of Municipal Corporation for the City of Ahmedabad on 16.2.1984. It appears that a complaint was prepared for being filed in the concerned court and copy thereof has been served upon the present petitioner as accused. The said copy has been produced by the learned Advocate for the petitioner which is taken on record. On going through the said complaint, it is found that the complaint runs into about 8 to 10 lines and at the foot of the said complaint, there is a list of witnesses including peon, two panch witnesses and one another peon. Then there is a signature of the complainant and below the said signature of the complainant, there is a rubber stamp which reads as follows:

"Scrutinised and sanctioned the prosecution".

6. Therefore, the sanction has been accorded by the learned Dy.Municipal Commissioner as above. The said sanction has been produced before the trial court and it is a part of record of the trial court also. There is no much dispute about the same. It is not the case of the original complainant that a separate sanction order has been recorded by the learned Dy. Municipal Commissioner and a copy thereof or that an extract of the said sanction order was produced on record. Even the

complainant has given evidence before the trial court stating that while issuing sanction, the sanctioning atuhority had put rubber stamp "scrutinised and sanctioned prosecution" and then the said order was signed by the learned Dy.Municipal Commissioner. This shows that this is a sanction accorded by the concerned officer.

7. A question has, therefore, arisen as to whether this can be treated to be a legally accorded sanction. On this aspect of the case, the learned Advocate for the petitioner has drawn my attention to an judgment of this Court dated 15.9.2003 in Criminal Misc. Application No.9018 and 9021 of 2001. It can be gathered from para 8 of the said judgment that in the said matter earlier decision of this court dated 15.9.2000 recorded in criminal revision application No. 110/94 was considered and there also the sanction accorded was in following words:

> "Scrutinised all papers and sanctioned prosecution."

Even in criminal misc. application No.9019 and 9021 of 2001, the sanctioning authority had accorded sanction in following words:

> "Scrutinised all the papers and sanctioned prosecution."

On the basis of the aforesaid orders in the aforesaid two petitions this Court was required to decide as to whether the sanction accorded could be treated to be valid. Incidently, the relevant portion from the judgment dated 15.9.2000 recorded by this Court (Coram : Hon'ble Miss Justice R M Doshit) in Criminal Revision Application No.110/94 was taken help of in the said matter and it would be appropriate to reproduce the said observation for ready reference:

> "The consent as recorded does not evidence active application of mind. Though no reasons are required to be recorded while granting consent under section 20 of the act, the prosecution is duty bound to satisfy the court that the consent had been given after perusal of all the relevant papers and after proper application of mind. Such application of mind can either be manifest in the consent granted or can be proved by oral evidence. In the present case, the Food Inspector has deposed that he had drafted the

> complaint and had submitted all the papers to the competent authority. The consenting authority had perused all the papers and recorded the consent as aforesaid. I am afraid, this is not sufficient to satisfy the court as regards the proper application of mind. The Food Inspector has not disclosed whhich were the papers which were placed before the consenting authority, nor the competent authority had been examined by the prosecution. Hence, in my view, the prosecution has failed to prove that the consenting authority had granted consent under section 20(1) of the Act after scrutinising all the relevant papers and after proper application of mind."

In view of the above pronouncement of this court in earlier criminal revision applications, it can be recorded that the order of sanction passed in earlier matters and the order of sanction passed in the present matter are almost identical and, therefore, the ratio of the earlier decision of this court referred to hereinabove will squarely apply to the facts of the present case. In other words, when the earlier sanction has been held to be illegal, there is no alternative but to hold in the present case also that the sanction accorded is not in conformity with the requirement of section 20(1) of the said Act and in absence of a valid sanction (sic consent). The prosecution against the petitioner will stand vitiated. In that view of the matter, the conviction and sentence awarded by the two Courts below cannot be sustained in the eye of law.

8. Therefore, I am of the view that this is a fit case where the revisional jurisdiction under section 397 read with section 401 of the Criminal Procedure Code can be exercised and the judgments and orders of the courts below can be quashed and set aside.

9. For the foregoing reasons, this revision application is allowed. The judgment and conviction order recorded by the two courts below as aforesaid are set aside. The petitioner is acquitted of offence punishable under section 7 read with section 16 of the Prevention of Food Adulteration Act, 1954. His bail bonds are cancelled. Fine, if paid, be refunded to the petitioner. Rule is made absolute.

[D P Buch, J.]

msp